

Comments on Draft Rule 327 IAC 19

To:

**#09-615(WPCB) [CFO Rulemaking]
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RECEIVED

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DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY**From:**

**Dirk Eggleston, T&M Limited Partnership
9451 N. State Road 10, Demotte, IN 46310**

On behalf of the following facilities with IDEM farm ID#:

Windy Ridge Dairy - #6045

Herrema Dairy - #6154

Bos Dairy - # 6155

Hidden View Dairy - #6380

Calf Land LLC - #3732

Moo Town - #2170

Date: September 24, 2010

Sent via fax

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We support regulations that give facility operators incentive to go above and beyond the minimum requirements in the rules. To that end the rules should significantly differentiate between CFO requirements and NPDES CAFO requirements. A significant difference gives a facility incentive to self implement measures which ensure that they do not discharge. This self regulation simplifies oversight by IDEM and allows IDEM to focus on verification that a facility is not discharging or causing actual pollution. Such an approach can reduce the fiscal impacts to the regulated community, and provide additional environmental protection for the citizens of Indiana at no additional cost to the taxpayer.

Comments on Draft Rule 327 IAC 19

Phosphorus Based Land Application:

Phosphorus based application as proposed has not been shown to be scientifically justified. It has not been shown that the proposed rule language will significantly reduce eutrophication of surface waters.

Based on our understanding of IDEM's process for the development of TMDLs for Indiana, the implementation of Phosphorus land application limits as proposed in the rule will not have measurable impact on the level of eutrophication observed within the waters of the state. While Phosphorus is often associated as a limiting nutrient for plant growth, there are several alternative causes of plant/algae growth which do not require Phosphorus concentrations above background levels. As such, implementation of Phosphorus limitations represents a large financial burden on CFOs without providing a clear benefit to the water quality of Indiana or the U.S.

Phosphorus eutrophication concerns can be better addressed through the development and regulation of TMDLs. Nutrient trading agreements via the TMDL process gives CFOs the incentive for more effective implementation of Best Management Practices beyond what can be written into this regulation.

We oppose adoption of phosphorus limitation regulation until IDEM demonstrates the effectiveness of such regulation and shows that the TMDL regulation that IDEM is currently working on will not be more effective. Has IDEM's CFO Rule Making group discussed the TMDL regulation development with IDEM's Shivi Selvaratnam to determine if the TMDL regulation would be more effective and to receive their opinion on the effectiveness of the proposed CFO phosphorus regulation?

Ground Water Monitoring:

As part of our IDEM permit, we have been conducting an effective water monitoring program at all our operations. We oppose additional water monitoring parameters and requirements beyond our current practices, particularly submittal of data to IDEM, until IDEM demonstrates that the current water monitoring program is not effective. What is IDEM's rationale for such significant changes to an already effective program? The proposed monitoring program will be a significant financial impact.

Manure Application to Frozen or Snow Covered Ground:

On a limited basis, we have successfully performed manure application to frozen ground in accordance with a soil conservation practice plan in an environmentally sound manner. Not being able to continue this practice on a limited basis will cause a significant financial impact. Since we have conducted frozen ground application successfully what is IDEM's rationale for banning such practices?

IC 13-18-10-4(2)(B) specifically requires that uniform standards for manure application are appropriate for a specific site. By prohibiting without exception the application of manure onto frozen or snow covered ground, the proposed rule prevents the application of site specific best management practices. In addition, the rule as drafted provides none of the flexibility contemplated by IC 13-15-2-2-(a)(6)

Comments on Draft Rule 327 IAC 19

Frozen or snow covered ground applications should not be exclusively prohibited, but should be limited to appropriate locations and conditions. The application of manure onto frozen or snow covered ground should be allowed if conducted in accordance with a management plan that includes a field based suitability/risk assessment.

Manure Application Setback Distances:

The proposed setback distances is a significant change from currently accepted best management practices, particularly in regard to Liquid Incorporation relative to property lines and roads. The regulation should differentiate between injection and incorporation relative to adjacent property lines, roads, and waters. The proposed rule should reflect setback distances for injection as listed in 327 IAC 16-10-4.

Potentially Available Nitrogen Defined

Defining "Potentially available nitrogen" as "the nitrogen that could be realistically taken up by a crop during one (1) growing season" requires consideration of nitrogen loss in the calculation. For example, nitrogen lost through volatilization is not available for crop growth. Application of additional commercial fertilizer will be required in order to achieve crop yield potential. Not achieving yield potential or adding commercial fertilizer is a significant financial impact. The proposed definition should be revised to include calculation of nitrogen loss due to volatilization resulting from application method.